

MAINE LAND USE PLANNING COMMISSION
Department of Agriculture, Conservation & Forestry
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TEL (207) 287-2631 FAX (207) 287-7439

MINUTES

REGULAR MONTHLY MEETING

Jeff's Catering, 15 Littlefield Way, Brewer
February 10, 2016

COMMISSIONERS PRESENT

Everett Worcester, Chair
Betsy Fitzgerald, Vice-Chair

Charles Pray
Mike Theriault

Bill Gilmore
Philip Curtis

Robert Everett
Paul Underwood

STAFF PRESENT

Nicholas Livesay, Executive Director
Samantha Horn Olsen, Planning Manager
Jean Flannery, Permitting & Compliance Manager
Ted Wolfertz, Greenville Regional Office

Stacie Beyer, Senior Planner
Billie MacLean, Ashland Regional Office
Naomi Kirk-Lawlor, Senior Planner
Mary York, LUPC Augusta

OTHERS PRESENT

Lauren Parker, Assistant Attorney General

See attached Sign in Sheets

Note: Commission votes are recorded in the following order:

number voting in favor of a motion – number voting against a motion – number abstaining – number absent

ADMINISTRATIVE MATTERS

Introductions

Introductions were made by members of the Commission, its staff, and the audience.

Minute Approvals; December 9, 2015 Minutes

Commissioner Gilmore moved to approve the minutes; Commissioner Pray seconded;

Vote: 8-0-0-0 Unanimous

DIRECTOR'S REPORT

Nick Livesay circulated the anticipated calendar and provided the director's report. He:

- Provided a brief overview of permitting totals for 2015 that were presented in the annual report;
- Summarized the number of petitions the Commission had received to remove places from the expedited permitting area and discussed the assistance provided by the Secretary of State's Office with signature verification; and
- Discussed private and special laws from 1989 and 1991 influencing the administration of the geographic area referred to as Misery Gore Township.

ENFORCEMENT MATTERS

McCluskey, Guy and Donna LaForge (EC 90-35 & EC 97-46), discussion of pending enforcement matter; Long Lake, T17 R3 WELS, Aroostook County; Billie MacLean

Billie MacLean gave a brief review of the presentation from the December 2015 meeting on Enforcement Case EC 97-46, including a new option for an administrative settlement agreement to keep the dwelling where it is currently located.

Commissioner Fitzgerald, absent in January, asked staff why this case had gone on as long as it had. Staff answered that it was unclear to current staff but speculated that it was due to the large workload of former staff and the former owner's unresponsiveness. Commissioner Pray stated that his concern was consistently with past cases and that if this issue is not addressed anyone could install a cement slab and get to stay where they built. Director Livesay explained that staff had looked at the records for the last 15 years or so and found 7 examples where dwellings were required to move back within an enforcement context, none of which had permanent foundation. There were more than 7 examples where dwellings were allowed to stay. Commissioner Pray noted that when there is a series of camps along the lake, moving a camp back doesn't seem to make sense provided the waste water treatment is back from the waterbody. Commissioner Underwood noted that guidelines may be needed for these nonconforming structures.

Commissioner Worcester proposed that the respondents remove all existing structures except for the dwelling on slab for now but that the dwelling should be relocated if the property is to be sold or transferred in the future. Commissioners discussed the technicalities of this option.

Commissioner Gilmore requested clarification on the new option (Attachment B) for a settlement allowing the dwelling to remain in place. Billie explained that the penalty was increased as well as allowing the dwelling to remain but there was still a release from future enforcement action in this option and no requirement to move the dwelling back should the ownership change in the future.

Commissioner Gilmore moved to approve option "B"; Commissioner Underwood seconded; Vote: 5-3-0-0 Passed (Commissioners Worcester, Theriault, and Fitzgerald opposed.)

Latourneau, Claude and Catherine Thabet (EC 15-48), discussion of pending enforcement matter and decision on how to proceed; Moosehead lake, Taunton and Raynham Academy, Somerset County; Jean Flannery

Jean Flannery gave a brief presentation on Enforcement Cases EC 15-48 which was followed by a presentation by Claude Latourneau. Mr. Latourneau stated in his presentation that he was a new owner of the property and an engineer by training, doing a lot of construction work across the United States. Mr. Latourneau stated that when he did his analysis to build the deck he determined from the rules that he did not need a permit. He explained some of the prior history on the site. He stated that there was also an old deck next to the cement pad that had been there over 20 years. He found the old rotten deck and the cement pad to be very unsafe for his five children which is why decided to build a new larger deck over the cement pad and over the area of the old deck.

Commissioner Gilmore asked Mr. Latourneau if the old deck was there prior to the 1999 construction of the cement pad to which Mr. Latourneau stated that it was there prior to the cement pad.

Mr. Latourneau went on to say that he tried to make the new deck aesthetically pleasing and to fit in harmoniously to the environment, and he stated that he extended the deck in size so he could level out the area and make it a uniform surface. Mr. Latourneau said that he used 10.27,P in his interpretation of why he did not need a permit for the deck. He stated that he realized that it needed to be permitted at 100 feet, however, he states that the cement pad was permitted at 2 feet previously so that should allow it.

Commissioner Worcester asked Mr. Latourneau if he did all of the research in the rules before he build the deck. Mr. Latourneau replied that he had looked at this before the deck was built. Commissioner Worcester asked Mr.

Latourneau if he was aware there was an LUPC office Greenville, to which Mr. Latourneau responded that he was not.

Commissioner Gilmore asked Mr. Latourneau how he would put the dock in and out now that he built a deck over the cement pad. Mr. Latourneau said that he would build a ramp to slide it upward.

Commissioner Fitzgerald asked Mr. Latourneau how big the cement pad was and to confirm that he built a bigger deck than the cement pad. Mr. Latourneau replied that he made it slightly bigger than the 8x18 cement pad to encompass the old deck and the cement pad and tried to even it out using the ground as a foundation. Commissioner Fitzgerald stated to Mr. Latourneau that he needed a permit because he exceeded what was there previously.

Jean Flannery spoke to clarify that 10.27,P requires the deck to meet the setbacks, which in this case would be 100 feet back. She stated that if Mr. Latourneau had asked staff to build a deck in this location staff would have said yes, but staff would have told him it needs to be 100 feet back. She went on to say that he can repair a compliant deck in this location, but once the repair exceeds 50 percent the structure needs to be moved back to 100 feet from the normal high water mark.

Director Nick Livesay spoke to clarify that even if the deck was shrunk to just the size of the cement pad, it still could not be built in the current location because of the change in use. Nick stated the statute which in part says that a structure cannot be erected, changed, converted, or wholly or partly enlarged without a permit. He stated that the Commission permitted a concrete pad, not a deck. He then went on to say that in rules there is no exception to the 100 foot setback for a new deck.

Commissioner Gilmore talked about options to make the cement pad safer.

Commissioner Underwood stated that there should be a way to make this cement pad safe with a handrail or similar device. Nick stated that there could be a fence built.

Commissioner Fitzgerald stated that there is a difference between a deck and a dock. This deck is not a dock, and the standards are different for each of them.

Jean Flannery spoke to say that staff could permit a stairway with handrails to the dock.

Commissioner Gilmore moved to approve staff recommendations; Commissioner Fitzgerald seconded; Vote: 7-0-1-0 Passed (Commissioner Theriault abstained.)

Quebec, Inc. (EC 11-06), discussion of pending enforcement matter, Big Twenty Township, Aroostook County; Billie MacLean

Billie gave a brief review of the presentation from the December 2015 meeting on Enforcement Case EC 11-06 including a revised administrative settlement agreement with a higher penalty, requirements for a letter of credit or performance bond, and the requirement to re-establish a road to the neighboring property. Staff recommended that the revised settlement be offered to Quebec Inc.

Commissioner Worcester asked if we had addressed the berm and test pits/monitoring wells that had been required in the original permit. Billie explained that nothing will be required for the areas already closed out but that the impacts to ground water in the new, active pit would be evaluated under the permit application review process. The

berm was no longer necessary, however, additional revegetation and re-sloping is being required under the settlement conditions.

Commissioner Worcester then asked if we were still in the process of negotiating a settlement. Billie and Director Livesay noted that the Commission had asked staff to make three changes: to the penalty; some sort of performance guarantee; and a solution to the trespass on the neighbor's property, and then bring it back to the Commission for consideration. The revised settlement had not been offered to Quebec Inc., but they had seen it in the mailing for the meeting.

Commissioner Underwood noted that the restoration of the access road was very important to include. Director Livesay explained that staff had been in contact with the abutting property owner.

**Commissioner Fitzgerald moved to approve staff recommendations; Commissioner Underwood seconded;
Vote: 8-0-0-0 Unanimous**

PLANNING / RULEMAKING MATTERS

FEMA Mapping, update on federal mapping of flood hazard areas and implications for the LUPC; Stacie Beyer.

Stacie Beyer provided the Commission with a brief update on the FEMA map revision project. She reviewed how the LUPC participates in the National Flood Insurance Program, some of the eligibility requirements for participation, the project that FEMA has underway to revise the flood insurance rate maps for all coastal counties across the United States, and the status of the map revisions for each of the six coastal counties in the LUPC's service area. She also explained that, to remain compliant with the National Flood Insurance Program, the LUPC has six months to adopt the new maps for Knox and Hancock Counties, and therefore, staff will be initiating a rulemaking process for adoption of those maps. Staff anticipates coming back to the Commission in April with a recommendation for adoption.

Commissioner Underwood questioned whether anyone had asked the County Commissioners if they have reviewed or endorsed the revised maps. Stacie replied that the LUPC does include the County Commissioners in the distribution list for the notice on the public comment process. She also explained how FEMA does a series of local coordination meetings as they roll out the new maps for which local officials and community members are invited to come, review the maps and provide comment.

Commissioner Gilmore asked if the new digital maps are done by the State or the federal government. Stacie answered that they are created by a contractor working for the federal government.

Commissioner Underwood asked if there is an appeal process after the maps are approved. Stacie indicated that FEMA's appeal period starts after the release of the preliminary maps, that the appeal period is publically noticed, and that we send letters to landowners explaining the appeal process. She also noted that there is an opportunity for landowners to request letters of map change after the maps are adopted.

Commissioner Fitzgerald commented that, from one map version to another, if a property is moved into resource protection, the homeowner is notified by letter. She questioned whether this was the Town's responsibility or FEMA's. Stacie replied that she was not aware of letters being sent, at any point in the process, directly to individual landowners if they are newly mapped in the flood zone. The time that they would become aware is when they go to get a mortgage. Nick Livesay wondered if, in the use of the terminology, Commissioner Fitzgerald was thinking

about shoreland zoning. In that statute or in Chapter 1000 of DEP rules for the municipal zoning level, if a municipality rezones a property such that it would be in the resource protection district, there is a requirement that the landowner be notified. Commissioner Fitzgerald agreed. Stacie also explained that is one of the reasons that LUPC is very careful to reach out to all the landowners in the UT with a letter. The letter strongly recommends that they look at the preliminary maps as soon as possible, so they can see for themselves if there are any changes affecting their property.

Commissioner Worcester asked if we had any ideas on the number of dwellings that would fall under this in the UT. Stacie explained that for Knox and Hancock Counties there were well over 50 property owners that the LUPC contacted for the release of the preliminary maps. However, staff hadn't checked to see if there are any dwellings on the properties or not. Commissioner Fitzgerald indicated that they have over 1200 people in Washington County- that is over half the County. Commissioner Worcester indicated that no matter how you try to notify people, in the end, a lot of people discover that they have been put in a flood zone after the fact and it is almost too late to do anything about it, other than buy insurance. Nick Livesay replied that it is so complicated. Commissioner Worcester agreed. Commissioner Gilmore commented that it is more of a federal issue than an LUPC issue at that point. Stacie followed that the landowner still has the right to request a letter of map change.

This item was for discussion purposes only. No vote was taken.

Chapter 10 Road Setbacks, discussion of review of existing setback standards, suggested revisions, and next steps; Naomi Kirk-Lawlor and Samantha Horn Olsen

Naomi presented the goals of road setbacks, current LUPC road setback standards and staff recommendations for changes to those standards as outlined in the Commission memo. Commissioners' discussion focused on the methods for measuring road setbacks.

Commissioner Worcester asked a clarifying question about the recommended requirement that commercial parking be to the side or rear of buildings. Would that apply to buildings with very large (e.g., 150 foot) road setbacks? Naomi clarified that the intention was to keep parking areas from infringing on the proposed 30 foot road setback in D-RS and D-GN subdistricts and that if commercial buildings were located farther from the road, then parking could be in front.

Commissioner Gilmore expressed the opinion that placement of structures should be based on deeded property lines and deeded boundaries rather than the location of the road. We could be opening up ourselves for trouble should roadways expand and we allowed a building to be permitted near the road.

Commissioner Everett asked if Commissioner Gilmore intended to suggest that we should use the edge of the right of way as a boundary for measurement. Commissioner Gilmore agreed and Commissioner Everett went on to point out that if we use the edge of the road as a boundary we could end up permitting a structure within a road right of way. Does DOT have the authority to require someone to move the structure if it encroaches their right of way even if LUPC permitted it?

Director Livesay answered that yes, the DOT could require that a structure be moved. He then explained why the current standards use the edge of the traveled road rather than the right of way for measurements. He pointed out that many roads within the LUPC service area have no deeded right of way, for example land management roads. Also, there is a balance between precision and the ease of application of the rule for staff and the public and finding the edge of the traveled way is straight forward. This is a trade-off that the Commission has been willing to make historically. We do not want to structure our rules to create common encroachment. DOT rights of way are very

variable and can be large. We could create a very large road setback with no encroachment problems, but people would not be happy with those large setback requirements. The question becomes, what is our risk tolerance?

Commissioner Gilmore pointed out that we make sure shoreland setbacks are accurate; do we want to also make sure that rights of way are not violated?

Commissioner Underwood suggested that we put a clarification in the rules that states that you cannot encroach on utilities or road rights of way and you must build on your own property.

Commissioner Theriault stated that building permits are issued based on the information presented; we do not conduct our own survey. If someone builds on someone else's property then they have a problem, we are not surveyors and we are not guaranteeing their property lines or the locations of rights of ways.

Commissioner Underwood expressed his opinion that this is mostly a problem with non-conforming lots, not new lots. What about lots with steep slopes? Certainly a 30 foot setback seems reasonable.

Commissioner Curtis points out that DOT right of ways are very variable and roads shift and move in space both due to changes in construction and the natural development of the road due to our travel patterns. We may want to give some thought to using the existing center line of the road as a measurement metric. Commissioner Curtis cautions that roads move over time. They are not cast in stone.

Samantha recalled that permitting staff were surveyed in the past about the most practical, efficient way to make these measurements and of all the options, using a right of way was the least favorite. This is because there are so many problems figuring out when there is or is not a right of way to begin with and also where it may be. So, for a blanket rule for everywhere, using a right of way becomes problematic on many of our roads because often there is not established legal right of way. Center lines were seen as somewhat difficult to define so there may be room for further training on how to identify center lines. Samantha agreed that in most cases new lots are not an issue but we can have issues in already developed areas. It may be useful for new development to fit into an already established line up of development.

Commissioner Worcester expressed the opinion that the staff are headed in the right direction and a reduction in setbacks in those subdistricts is appropriate. The Commission agreed that the staff are going in the right direction with their recommendations.

Community Guided Planning and Zoning, review of revised Phase 1 report for Western Maine CGPZ initiative; Samantha Horn Olsen

Samantha presented a wording correction to the Phase 1 report and recommended approval of the correction.

Commissioner Fitzgerald moved to approve the staff recommendation; Commissioner Curtis seconded;
Vote: 8-0-0 Unanimous

ENFORCEMENT MATTER

Frenette, Floyd James (EC 90-389 & EC 02-21), discussion of pending enforcement matters, Saint John Plantation, Aroostook County; Billie MacLean

Billie gave a presentation of Enforcement Cases EC 90-389 & EC 02-21, grouping the issues as Title, Permitting and Property Issues. Commissioner Underwood asked for clarification of the location of the trailer on the lot. Billie noted that depending on the location of the lot lines, most or all of the trailer could be located on the abutting lot.

Mr. Frenette began his presentation by stated that he had permission from the Bangor and Aroostook Railroad (former owners of the abutting land) to develop onto their land. He also presented his claim that the Assessors of St. John Plantation gave his land to other parties illegally. Commissioner Pray asked for clarification on some of the references giving by Mr. Frenette. Commissioner Worcester explained that the staff issued a permit for the trailer but not the second dwelling (former store), but that the Commission is not pushing that issue at this time because it is not posing a significant risk and due to the title issues.

Mr. Frenette explained that the Plantation was not taxing him for all of the land he was granted under the court order and indicated that the Commission should do something about it. Commissioner Underwood asked if we were seeking to resolve a compliant and what was the staff's recommendation. Director Livesay indicated that Mr. Frenette requested the meeting and that staff were not pursuing the enforcement issue at this time.

Commissioner Worcester explained that the Commissioners did not have any authority over the legal issues Mr. Frenette had and that he would need to take those matters up somewhere else. Assistant Attorney General Parker further explained to Mr. Frenette that the Commission could help him with permitting and enforcement matters but could not help him with title disputes.

No Staff Recommendations; No Vote

PLANNING / RULEMAKING MATTER

Subdivision Rule Review; discussion of focus group meetings and next steps for addressing the location of development; Samantha Horn Olsen and Stacie Beyer

The Commission is currently evaluating and rewriting its subdivision standards, and is preparing to move from the discussion of standards, subdivision types and layouts into a discussion of location. Samantha reviewed the contents of the staff memo for the Commission.

Stacie Beyer then demonstrated the web-based mapping program, which may eventually include available data from state resource agencies, existing zoning, and other features. Commissioner Worcester commented that this is likely to be a good tool for developers and will minimize design costs. Commissioner Fitzgerald added that the Washington County Council of Government (WCCOG) has developed a similar tool for organized municipalities in the Downeast region, and the Maine GEO Library would also be interested in this effort.

After reviewing the progress to date on the project, and the considerations listed in the memo, Staff recommends that the Commission take a comprehensive approach to addressing adjacency and look at all the different uses at once so as to avoid a fragmented approach that potentially could result in a more complex and inconsistent policy with regard to location.

Commissioner Gilmore commented that the developer of a particular project or piece of land logically selects locations based their ability to successfully sell lots; and that subdivisions on private roads are very different from those on public roads. Access will be an important issue to consider in this process, although the importance of locating development on public roads may vary in different parts of the Commission's service area.

Commissioner Worcester commented that he would like staff to pursue a comprehensive approach, and would like more information about what direction this effort may take. It's important to address adjacency in a broader context, and to not frustrate stakeholders that participated so actively in the subdivision review process. Commissioner Worcester commented that he is interested in looking at the big picture and finding out how the Commission might be able to identify and expand opportunities for development.

Commissioner Underwood would like to consider applying some ideas already generated in Community Guided Planning and Zoning (CGPZ) across the board. There are good tools in place that will be useful in addressing this issue.

Commissioner Fitzgerald commented that the function of adjacency makes sense in a larger regional context and she would be interested in seeing how the Commission might define the principle differently. In addition to things that should be located in close proximity, are there certain uses that are not compatible and should not be near each other? There are a lot of potential solutions. For example, in the Aroostook CGPZ process they pre-selected appropriate locations for certain kinds of development in places where there is likely to be some demand and that otherwise meet the objectives embedded in the adjacency principle.

The Commission heard from several members of the audience.

Eliza Donaghue, representing the Natural Resources Council of Maine (NRCM), commented that the adjacency principle in its current form effectively protects the North Woods and helps the Commission meet its responsibility to plan for the future and not just react to current conditions. Before adjacency is addressed comprehensively, it would be more appropriate to first develop other tools and address other issues such as the rate of development occurring outside of subdivision (e.g., divisions accomplished under "2 in 5"), and expansion of the CGPZ program.

Commissioner Theriault asked, out of NRCM's 16,000 members, how many are from Maine? The UT includes some areas that are largely composed of large parcels and the Commission should allow some flexibility for land owners to be able to serve tourists and seasonal residents who contribute significantly to the economy in rural Maine. Ms. Donaghue responded that nine out of ten NRCM members are from Maine. The CGPZ processes are a good way to look beyond the adjacency principle and engage in opportunities that are unique to each region. Commissioner Pray asked how many members might own or lease land in the North Maine Woods. Ms. Donaghue responded that many NRCM members own land in the UT. Public participation in the subdivision review process was high, and NRCM would like to see the process continue.

Patrick Strauch, representing Maine Forest Products Council (MFPC), addressed the Commission on behalf of landowner members. MFPC would like to have the larger discussion about the location of development rather than a piecemeal approach. This idea is what MFPC has been looking for throughout the subdivision review process. MFPC supports this effort and looks forward to participating fully in the discussion.

Commissioner Underwood asked whether large land owners anticipated any demand in remote areas in the future for residential or other forms of growth. MFPC represents a broad spectrum that represents everything from large lots to recreational or smaller camp lots. The region needs opportunities but there isn't a particular trend that should be focused on now, beyond developing more value for landholdings. Commissioner Pray asked how many members were from Maine? How many acres are owned by out-of-state interests vs. Maine-based companies? The MFPC profile includes a diverse group of interests including: family owned companies; individuals such as John Malone or Irving; or TIMO companies composed of investors from all over who make money from stumpage sales; as well as publicly traded companies such as Plum Creek.

Jenn Gray representing Maine Audubon (MA) and their 20,000 members and supporters which includes mostly Maine residents commented that we all want to do more planning to identify potential economic development opportunities in the jurisdiction. Adjacency is one of the only tools available to help guide development at the jurisdictional level. MA would like to see more CGPZ projects, but does not support eliminating or altering the adjacency principle.

Commissioner Worcester commented that the Commission agrees that prospective zoning is the way to go. Some CGPZ projects are still getting their act together and the Commission agrees that these are worthy projects and looks forward to doing more in the future. However, sometimes events overcome us, and addressing the adjacency issue may be one of these instances. It's easy to frame this as an either/or proposition, but he is not willing to eliminate the adjacency principle unless there is a logical, comparable, system to take its place.

Ken Lamond from Family Forestry has been involved in the Subdivision process and has participated in similar planning efforts in the past. Ken commented that adjacency has always been a difficult issue for developers to address. He supports a comprehensive approach to looking at adjacency and look forward to participating in an open process.

Commissioner Underwood asked if large lot developments primarily are for seasonal use, and whether backlots are likely to sell. Mr. Lamond responded that most are seasonal, recreational developments. He said they include that on the plan and in the deeds so that people know that they shouldn't expect services on par with more developed areas. Backlots are difficult to sell and cost a lot to create.

Kay Michka is a resident of Lexington Twp and a member of the Western Maine CGPZ planning committee, and commented that the Commission shouldn't rely solely on the CGPZ program. She is the only citizen who is on the Western Maine committee that doesn't represent a larger organization or interest. The committees are appointed by sponsoring organizations and generally are made up of individuals who are very pro-development. That should be kept in mind when considering how much to weight the outcomes of these regional planning projects. Also, please consider that some CGPZ efforts are more effective than others.

Commissioner Worcester commented that he appreciates Kay's comments and agree that it is difficult to get people involved and we need to make an effort to do that effectively. Commissioner Pray commented that each member of the Commission comes from a county with unorganized territories and it is a well-rounded and diverse group that has a pretty good understanding of resident's opinions.

Nick Livesay thanked everyone for contributing to the discussion and commented that adjacency is a term that is intended to embody sound planning, which includes a number of principles. The memo recommends the Commission review the one mile rule of thumb historically used to interpret the adjacency principle and see if we can do better. What vision do we want to achieve, and what do the people who live in these areas want? It will be important to allow some room in this process for articulating what people want for their area. CGPZ is a good tool and provides us with something to start with, but there is a potential for a patch-work outcome with products that are unique to each region but may add complexity to regulations for the jurisdiction as a whole. Adjacency is important enough, and central enough, that it warrants attention by this commission as opposed to farming it out to efforts in each region.

OTHER MATTERS

Commissioner Comments – N/A

ADJOURN Meeting adjourned at approximately 3:30pm.